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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 01-660)

In re the Application of:

Nasir, et al.

Serial No.: 09/905,452

Filed: July 13, 2001

For: FLUORESCENCE POLARIZATION-
BASED HOMOGENEOUS ASSAY
FOR AFLATOXINS

Confirmation No. 5761

Group Art Unit 1641

Examiner: Deborah Davis

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION TO REVIVE
UNDER 37 C.F.R. § 1.137(b)**

Dear Sir:

Applicant has not received a Notice of Abandonment from the Office and believes that he has fully complied with the Rules and Regulations of the Office. However, pursuant to the prepublication notice entitled "Reminder that Rescission of a Nonpublication Request is Not Itself a Notice of Foreign Filing" posted on the Patent Office Web site on April 16, 2003, it appears that the above-captioned application may be deemed abandoned if this prepublication notice is given retroactive effect by the Office. Therefore, out of an abundance of caution, Applicant submits this petition to revive in case the application is deemed to have been abandoned under 37 C.F.R. § 1.213(c).

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OFFICE OF PETITIONS

Pursuant to 37 C.F.R. § 1.213(a), Applicant submitted a request for nonpublication with this application upon filing.

Applicant subsequently filed a corresponding international application with the U.S. Patent and Trademark Office as PCT Receiving Office, which is identified on the Notice attached hereto at Tab A. Within 45 days of the international filing, Applicant filed a Request to Rescind Previous Nonpublication, a copy of which is submitted herewith at Tab B.

Applicant believes that its filing of the Request to Rescind Previous Nonpublication within 45 days of the international filing constituted full compliance with 37 C.F.R. § 1.213(c), based on the note in Form PTO/SB/36 (10-01 version) explaining generally that "filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii)." However, the April 16, 2003, prepublication notice now suggests that the Patent Office might not consider a Request to Rescind, in and of itself, to constitute sufficient notice of foreign or international filing.

In addition, Applicant believes that the act of filing the international application with the U.S. Patent and Trademark Office as PCT Receiving Office constituted notice to the U.S. Patent and Trademark Office of the international filing, as required by 37 C.F.R. § 1.213(c).

If the Office considers this application to be abandoned, then Applicant hereby requests revival of the application. Applicant hereby states that the entire delay in notifying the Office as in the Notice at Tab A of the international filing until the filing of this petition was unintentional.

If the Office does not consider this application to be abandoned, then Applicant requests refund of the enclosed petition fee. Further, even if the Office considers this application to be abandoned, Applicant respectfully requests the Office to waive and refund the enclosed petition fee due to the ambiguity in Form PTO/SB/36 (10-01).

Respectfully submitted,

**MCDONNELL BOEHNEN
HULBERT & BERGHOFF**

Date: May 8, 2003

By: Richard A. Machonkin
Richard A. Machonkin
Reg. No. 41,962

**SUPPLEMENTAL NOTICE OF
FOREIGN OR INTERNATIONAL FILING**

Applicant filed International Patent Application No. PCT/US02/21696 on July 10, 2002.

If any further notice of foreign or international filing is or will be required by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 C.F.R. § 1.213(C), Applicant hereby provides such notice.